



March 16, 2001

ENGROSSED HOUSE BILL No. 1307

DIGEST OF HB 1307 (Updated March 14, 2001 3:49 PM - DI 106)

Citations Affected: IC 34-13.

Synopsis: Liability of board members. Specifies that members of boards, committees, commissions, authorities, or other instrumentalities of governmental entities are not personally liable for acts performed within the scope of their employment.

Effective: Upon passage.

Bottorff, Cochran, Cherry

(SENATE SPONSORS — MERRITT, SIPES, LEWIS)

January 9, 2001, read first time and referred to Committee on Local Government.
January 31, 2001, amended, reported — Do Pass.
February 5, 2001, read second time, ordered engrossed. Engrossed.
February 8, 2001, read third time, passed. Yeas 90, nays 4.

SENATE ACTION

February 27, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
March 15, 2001, amended, reported favorably — Do Pass.

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EH 1307—LS 7490/DI 106+



March 16, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED HOUSE BILL No. 1307

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-13-2-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. A present or
3 former public employee, **including a member of a board, a**
4 **committee, a commission, an authority, or another instrumentality**
5 **of a governmental entity**, is not personally liable on contracts entered
6 into within the scope of the employee's employment for a governmental
7 entity unless it is clearly otherwise indicated in writing.

8 SECTION 2. IC 34-13-3-5 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) **Civil actions**
10 **relating to acts taken by a board, a committee, a commission, an**
11 **authority, or another instrumentality of a governmental entity may**
12 **be brought only against the board, the committee, the commission,**
13 **the authority, or the other instrumentality of a governmental**
14 **entity. A member of a board, a committee, a commission, an**
15 **authority, or another instrumentality of a governmental entity may**
16 **not be named as a party in a civil suit that concerns the acts taken**
17 **by a board, a committee, a commission, an authority, or another**

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instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee, **including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity**, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment must be exclusive to the complaint and bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

~~(b)~~ (c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

~~(c)~~ (d) Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

- (1) the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss; and
- (2) the:
 - (A) governor in the case of a claim or suit against a state employee; or
 - (B) governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;



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determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.

~~(d)~~ (e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

~~(e)~~ (f) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 3. IC 34-13-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees, **including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity.** Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

(1) The requiring of contractors to carry insurance.

(2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.

(3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.

(4) The purchase of casualty and liability insurance for foster parents (as defined in IC 27-1-30-4) on a group basis.



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1 SECTION 4. IC 34-13-4-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. If a present or
3 former public employee, **including a member of a board, a**
4 **committee, a commission, an authority, or another instrumentality**
5 **of a governmental entity**, is or could be subject to personal civil
6 liability for a loss occurring because of a noncriminal act or omission
7 within the scope of the public employee's employment which violates
8 the civil rights laws of the United States, the governmental entity shall,
9 subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and
10 IC 34-13-3-16, pay any judgment, compromise, or settlement of the
11 claim or suit when:
12 (1) the governor, in the case of a claim or suit against a state
13 employee; or
14 (2) the governing body of the political subdivision, in the case of
15 a claim or suit against an employee of a political subdivision;
16 determines that paying the judgment, compromise, or settlement is in
17 the best interest of the governmental entity. The governmental entity
18 shall also pay all costs and fees incurred by or on behalf of a public
19 employee in defense of the claim or suit.
20 SECTION 5. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1307, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 4 with "[EFFECTIVE UPON PASSAGE]".

Page 4, after line 13, begin a new paragraph and insert:

"SECTION 5. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to HB 1307 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred House Bill No. 1307, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "only".

Page 1, line 12, after "brought" insert "**only**".

Page 2, line 2, after "employment." insert "**For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.**".

Page 3, line 40, delete "the" and insert "**a**".

and when so amended that said bill do pass.

(Reference is to HB 1307 as printed February 1, 2001.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

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